

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL STEVE COX,

Petitioner,

vs.

J. PALMER, et al.,

Respondents.

3:10-cv-00596-ECR-RAM

ORDER

Petitioner submitted a habeas corpus petition pursuant to 28 U.S.C. § 2255, but neither paid the required filing fee nor filed an appropriate motion for leave to proceed *in forma pauperis*. The action was ultimately dismissed when petitioner failed to comply with the Court's order to pay the fee of apply to proceed *in forma pauperis*. Petitioner has filed a notice of appeal. Because the dismissal was without prejudice, the court did not address the issue of a certificate of appealability.

Because the appeal has been filed and the Court of Appeals requires this Court to decide whether it is appropriate to issue a certificate of appealability, the Court will do so. The certificate of appealability shall be denied.

Generally, a petitioner must make "a substantial showing of the denial of a constitutional right" to warrant a certificate of appealability. *Id.*; 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). "The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.* (quoting *Slack*, 529 U.S. at 484). In order to meet this threshold inquiry, the petitioner has the burden of demonstrating that the issues are

1 debatable among jurists of reason; that a court could resolve the issues differently; or that the questions
2 are adequate to deserve encouragement to proceed further. *Id.*

3 Pursuant to the December 1, 2009 amendment to Rule 11 of the Rules Governing Section
4 2254 and 2255 Cases, district courts are required to rule on the certificate of appealability in the order
5 disposing of a proceeding adversely to the petitioner or movant, rather than waiting for a notice of appeal
6 and request for certificate of appealability to be filed. Rule 11(a). This Court has considered the issues
7 raised by petitioner, with respect to whether they satisfy the standard for issuance of a certificate of
8 appealability, and determines that none meet that standard. The Court will therefore deny petitioner a
9 certificate of appealability.

10 **IT IS THEREFORE ORDERED** that no certificate of appealability shall issue in this
11 matter.

12 Dated, this 7th day of February, 2011.

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14 UNITED STATES DISTRICT JUDGE
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